

THE MUNICIPAL DISTRICT OF WILLOW CREEK NO. 26
P.O. BOX 550, CLARESHOLM, ALBERTA T0L 0T0

NOTICE OF DECISION
OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING NO. 071-16

APPELLANT (APPLICANT): **Bonnie Waters**
Box 789
Nanton, AB
T0L 1R0

In the matter of an Appeal of the Decision of the Development Authority of the Municipal District of Willow Creek No. 26, whereby an application to construct a 1700 sq ft house with an attached two car garage as the primary residence with the additional construction of a 36ft X 36ft barn for personal use in the Municipal District of Willow Creek No. 26 on land legally described as NE 22-14-29 W4M was TABLED/ NO DECISION RENDERED by the Municipal District of Willow Creek No. 26 Development Authority.

And in the matter of an Appeal held under the Authority of Sections 627 and 629 of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA).

The Decision and reasons for the Decision of the Subdivision and Development Appeal Board (the Board) after a Hearing duly convened in accordance with Sections 685 and 686 of the MGA on August 24, 2016, at 1:30 P.M. are as follows:

DECISION:

The Board has decided the appeal be **UPHELD** and that Development Permit Application 071-16 be **APPROVED subject to Conditions.**

The Board approves development permit application 071-16 to allow the construction of a 1700 sq ft house with an attached garage as the primary residence, with the additional construction of a 36ft X 36ft barn for personal use. The development is **APPROVED** subject to the following **conditions:**

1. A development agreement for the access road to be built to a standard as agreed to with the Municipal District of Willow Creek No. 26, shall be entered into between the applicant/landowner and the Municipal District of Willow Creek No. 26 and it shall be registered on the land title.
2. The access road shall be constructed to a standard agreed to with the Municipal District of Willow Creek No. 26 and as close to possible, within reason and in consideration of the surrounding area, to the Minimum Local Road Standard Policy 320-07 or at the discretion of the Superintendent of Public Works or their designate.
3. Prior to construction or commencement of the development, the developer/owner shall obtain all necessary permits under the Alberta Safety Codes Act, (including building, electrical, gas, plumbing and private sewage disposal system) as required. Permits must be obtained from Superior Safety Codes Inc and a copy of permits to be filed with the Municipal District of Willow Creek No. 26 office.

4. The applicant/developer shall comply with Schedule 5 standards of development as well as the Land Use District Regulations of the Rural General - RG Land Use District in Schedule 2 of the Land Use Bylaw No. 1616.
5. There shall be no development within 20 feet of the adjacent property lines and 75 feet of the municipal road allowance boundary, including trees and board/plank/chain link fences, unless a development permit is obtained that specifically varies the required setback.

FACTS:

Upon having heard what was alleged by the Appellants (Applicants) and **upon having heard** what was alleged by the Development Authority and **upon hearing** others listed in Appendix B of this Decision and **upon having read** Exhibits noted in Appendix A of this Decision, the Board finds the facts to be as follows:

1. On June 28, 2016 the appellant submitted Development Permit Application 071-16 (DA 071-16) to construct a 1700 sq ft house with an attached garage as the primary residence, with the additional construction of a 36ft X 36ft barn for personal use parcel (Exhibit EE1) on lands legally known as NE 22-14-29-W4M [*Subject Parcel*].
2. The subject parcel is designated as Rural General - RG in Land Use Bylaw No. 1616 (LUB 1616) Schedule 2, Land Use District Regulations.
3. On June 29, 2016, the Municipal District of Willow Creek No. 26 (The MD) Development Officer, Ms. Cindy Chisholm sent out notice of the MPC meeting regarding DA 071-16 to affected landowners (Exhibit GG1).
4. On July 26, 2016 the Development Officer sent out Notice to the appellant, Ms. Bonnie Waters, regarding the decision of the MD Municipal Planning Commission (MPC) to Table DA 071-16, with the request for the appellant to sign a time extension agreement.
5. The MPC tabled the application and did not make a decision as it believed the application was intrinsically linked to Development Application 041-16 and conditions placed on that permit, in particular, the signing of a development agreement for the road, would have an effect on the proposed development for DA 071-16.
6. On August 9, 2016 the appellant filed an appeal with the following reasons:

1. *Too onerous and biased*
2. *Municipal Government Act Section 532(1) (a) (b) and (2) This act states:*

Repair of roads, public places and public works

532 (1) Every road or other public place that is subject to the direction, control and management of the municipality, including all public works in, on, or above the roads or public place put there by the municipality or by any other person with the permission of the municipality, must be kept in a reasonable state of repair by the municipality having regard to

- (a) the character of the road, public place or public work, and*
- (b) the area of the municipality in which it is located.*

532 (2) *The municipality is liable for damage caused by the municipality failing to perform its duty under subsection (1)*

3. *This road (TWP Road 144 west of range 291) the road in question was constructed by the M.D. of Willow Creek themselves. It was moved from a much lesser gradient to a very steep gradient at the request of one land owner even though the larger community lobbied against it.*
 4. *The M.D. of Willow Creek Planning Commission continually references TWP Road 144 west of Range Road 291 was a "road allowance" in their documents referencing the "approval" yet AXYS Environmental Consulting Limited reference the road as a medium grade gravel road in a environmental report I had done. This will be confirmed with pictures and the environmental report itself.*
 5. *The Stavely Research Ranch designates travel TWP Road 144 west of Range Road 291 exceedingly more than I do. This ranch is now owned by the Provincial Government not the Lethbridge Research Station and the Federal Government as of November last year so the parameters of use have greatly changed.*
 6. *The Explornet internet maintenance people frequently use TWP Road 144 west of Range Road 291. The M.D. of Willow Creek approved the tower to be placed on the road allowance directly beside the medium grade gravel road. Pictures to come.*
 7. *Neighbors have been issued development permits without having to rebuild a municipal public road that was not in compliance with Policy No. 320-07 or having a caveat filed against their property until such time as the road was rebuilt.*
 8. *Every access road into the community of Beaver Valley is not in compliance with policy No. 320-07. They are all on a steeper gradient than 7%. This is the community where my quarter is.*
 9. *Hills are common and that is what makes the area so unique. People like myself love them and learn to respect and get along with them.*
7. The road used to access the subject parcel, TWP Road 144 West of Range Road 291 [Subject Road], is located within the MD road allowance, is designed below the MD minimum local road standard according to Policy 320-07 and is in need of an upgrade as stated by the Superintendent of Public works Mr. Roy Johnson.
 8. The MD Minimum Road Standard Policy came into effect in 2007, as well as the MD Road Access Policy in 2008. Substandard roads existing after these dates may be subject to compliance with the current Minimum Road Standard Policy as outlined in Policy 320-07 as well as being subject to the Road Access Policy 320-08.
 9. The subject road was previously developed at a grade that was less steep, but was constructed outside of the road allowance as a forced road cut across the hill slope. The MD redid the road and developed the current road within the designated road allowance at a steeper grade. At the time of this development the Minimum Local Road Standard Policy 320-07 was not in effect.
 10. Mr. Johnson stated that the subject road is not an all-weather road, meaning that at times of the year the road is impassable if it remains in the current condition that it is developed and is difficult and unsafe for municipal equipment to maintain the road all year.

11. Mr. Burla, Senior Planning advisor for the MD, stated that a development agreement for the construction of a public road as a condition of the development of a permanent residence was a standard condition when dealing with substandard roads accessing permanent residences in remote parts of municipalities as evident by Exhibit W.
12. LUB 1616, Administration, Permitted Use Applications, section 14, 15 & 17 state:
 14. *Upon receipt of a completed application for a development for a permitted use, the Development Officer shall, if the application otherwise conforms with this bylaw, issue a development permit with or without conditions.*
 15. *The Development Officer may refer any application for a permitted use to the Municipal Planning Commission for a decision.*
 17. *The Development Officer and/or the Municipal Planning Commission may impose reasonable planning related conditions attached to the issuance of a development permit for a permitted use including, but not limited to:*
 - (a) *referrals to pertinent government department for their appropriate approvals;*
 - (b) *obtaining a building permit and filing a copy with the municipality*
 - (c) *entering into a development agreement with the municipality;*
 - (d) *the filing of pertinent engineering report prior to construction commencing;*
 - (e) *the filing of necessary applications if a variance or waiver is required;*
 - (f) *the establishment of the proposed setbacks envision for the development.*
13. LUB 1616, Administration, Development Agreements, Section 31 states:
 31. *The provision of a development agreement pursuant to the MGA may be required as a condition of a development permit or a subdivision approval.*
14. LUB 1616, Schedule 2 Land Use District Regulations, Rural General - RG, 1. Land Uses (a) includes the following permitted uses:
 - (a) *Permitted Uses:*
 - Accessory buildings or uses*
 - Primary farm residences*
15. LUB 1616, Schedule 5 Standard of Development, Section 11 Development Agreements states:
 11. *Where a development is proposed in any land use district which would require servicing beyond that which the municipality might normally supply, the Municipal Planning Commission may require that a development agreement which would establish the responsibilities of each of the involved parties be entered into by the developer(s) and the municipality.*
16. The MD policy regarding the minimum local road standards is contained in Policy 320-07, Minimum Local Road Standards Policy.
17. The MD policy regarding road access is contained in policy 320-08 - Road Access Policy.
18. The MGA, Section 642(1) states:
 - (1) *When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640 (2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw, issue a development permit with or without conditions as provided for in the land use bylaw.*

19. The MGA, Section 650(1)(a) states:

(1) A council may in a land use bylaw require that, as a condition of a development permit's being issued, the applicant enter into an agreement with the municipality to do any or all of the following

(a) to construct or pay for the construction of a road required to give access to the development;

20. The MGA, Section 687(3) states:

(3) In determining an appeal, the subdivision and development appeal board

(a) must act in accordance with any applicable ALSA regional plan; (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

(b) must have regard to but is not bound by the subdivision and development regulations;

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw, if in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw. In determining an appeal, the subdivision and development appeal board must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect.

REASONS:

THAT the Board encompasses the findings of fact within these reasons and, as a result, **UPHOLDS the appeal** and **APPROVES** the development **subject to conditions**, based on the following:

1. The Board finds that a residential dwelling is a permitted use in the Rural General Land Use District of LUB No. 1616, and if the stipulated standards or requirements of the bylaw are met, the Board is duty bound to issue a development permit in accordance with the MGA. In respect of this, the Board has issued development permit No. 071-16 subject to conditions, to allow the applicant to construct a primary farm residence on the subject parcel.
2. The Board is satisfied with the conditions imposed, that the use is suitable for the intended purpose. The Board has determined that the road issue is to be dealt with through the terms of the Development Agreement entered into between the applicant and the MD. The Board recognizes that this application (071-16) is closely associated to development application No. 041-16 and pertains to

the same parcel of land owned by the applicant, and as such, the Board finds that addressing the road access is more applicable and should be addressed through this development application and permit No. 071-16 as it relates to a permanent dwelling and a permitted use.

3. The Board finds that the MGA section 650(1) and LUB No. 1616 gives the authority to the municipality to require the applicant enter into a Development Agreement for the purpose of addressing access and road issues as they pertain to approving a development permit. If an agreement is mutually entered into and signed between the applicant and the MD, the Board sees no reason as to why a development permit would not be issued.
4. The Board recognizes the concerns expressed by the applicant and that a requirement to upgrade the existing road to the present municipal standards (Minimum Local Road Standard Policy 320-07) may seem very onerous and unfeasible; while also recognizing that the MD has a road policy in place to apply a consistent and reasonable standard to all ratepayers while also limiting municipal liability and safety concerns. However, in reviewing the individual merits and circumstances of this case, the Board is of the opinion the two parties need to work together and cooperate to find an access and road solution that is fair and reasonable to each, as best possible. This is best addressed through the individual terms of the associated Development Agreement.
5. From the evidence presented at the hearing, the Board acknowledges that the municipal road required for access to the subject parcel is presently not developed to the current full Municipal District of Willow Creek No. 26 standards, but also recognizes the road is not a main, high-use public road, is not a full through-road to the west, and there will likely be little other similar development to occur in the area. There is also a past history with the subject road relating to why the road is in the state it is and the existing grade. For these reasons, the Board is supportive of investigating alternative access and road solutions.

INFORMATIVE:

The Board recommends that the MD and the applicant investigate and consider alternative access options or road arrangements to the subject land that may be acceptable to both parties and the possibility of a deviation or alteration from the MD's Minimum Local Road Standards Policy 320-07 as the maximum 7% required grade, among other requirements, may not be achievable in this area.

APPENDIX A

Documentary Material Submitted to the Board:

NO.	ITEM
AA.	Notice of Hearing and Subject Parcel Map
BB.	List of Persons Notified
CC.	Letter of Appeal
DD.	Notice of Decision with conditions outlined.
EE.	Development Application No. 071-16, with location map, site and dwelling plans.
FF.	Photographs of subject parcel taken by M.D. of Willow Creek Development Officer.
GG.	Notice of Application and M.D. of Willow Creek Municipal Planning Commission Regarding Development Application No. 071-16.
HH.	Development Officer Report to the M.D. of Willow Creek Municipal Planning Commission Regarding Development Application No. 071-16.
II.	Excerpts from the unapproved minutes from the M.D. of Willow Creek Municipal Planning Commission meeting regarding Development Application No. 071-16.
JJ.	Additional information regarding reasons for appeal, submitted by the appellant regarding Development Permit Application 071-16, Submitted August 23, 2016.
U.	Supporting information for Appeal Hearing 041-16 & 071-16, submitted by the appellant on August 23, 2016.
V.	Request to Postpone the hearing from Huckvale LLP, Submitted by the appellant on August 19, 2016.
W.	Handout regarding a legal case involving roads as a condition of development, submitted by Mike Burla, Senior Planning Representative.

APPENDIX B

List of persons who gave oral evidence or made submissions:

CAPACITY	NAME
Appellant/Applicant:	Bonnie Waters
Municipal District of Willow Creek No. 26 Representatives:	Mike Burla – Senior Planning Advisor Glen Alm - Municipal Planning Commission Chairperson Roy Johnson - Superintendent of Public Works
Public Gallery	Hilt Collis Jory Cofield

Date:

_____ *SEPT 06/16* _____

Signed:

_____ *Barry Johnson* _____
Chairman of the Subdivision and Development Appeal Board
Municipal District of Willow Creek No. 26

IMPORTANT:

**This Decision of the Subdivision and Development Appeal Board
is final and binding on all parties and persons, subject only to Appeal to the Provincial Court of Appeal.**